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DOCKET MANAGEMENT SYSTEM
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U.S. DEPARTMENT OF TRANSPORTATION

Dear Sir or Madam:

To comment on the proposed changes to the "Anti-drug and Alcohol Misuse Preventive Program for Personnel Engaged in Specific Aviation Activity", I must first comment on my inability to read the listed charts on pages 9367, 9368, 9378, 9379, 9380, and 9381. From my readings, I believe these charts reference Appendix I and Appendix J respectfully. Through my readings, of what I was able to print from Document FAA-2002-11301-1, and from the summary on page 9366, the FAA is proposing changes to the Anti-drug plan and alcohol misuse prevention programs, and make changes to the certified statement of submission requirements for employers and contractors. The FAA is proposing to revise the pre-employment testing; to modify the reasonable cause and reasonable suspicion testing requirements, and changing the regulations in the belief that it would increase safety and be less of a burden on the regulated public.

Additionally, the FAA is proposing amendments and changes to reasonable cause drug testing, reasonable suspicion alcohol testing, periodic drug testing, the approval process of anti-drug program plans, and the approval process of certification statement for alcohol misuse prevention programs.

I believe the FAA is proposing to clarify regulatory language to increase consistency between the anti drug and alcohol misuse prevention programs regulations and eliminating regulatory provisions that are no longer appropriate. If this is the case, even though the given charts were somehow corrupted as I attempted to print it, I will proceed to comment on my opinion, of what I understand the proposed changes to be.

Commenting on the proposals change in terminology, the language used, I feel will in fact clarify confusing statements. In some cases, making it easier for workers to get tasks accomplished, across organational lines. This will give the industrious among us, the ability to perform, and may lead to increased competition within the industry, as an off-shoot, still in all it will unclog bottle-necks in the system, now impeded by confusion and loopholes.

On "who" is to be tested, I think the FAA is justified in it's desire to make testing an inclusive requirement, rather than excluding members of the employee work pool, due to a "grandfather clauses" currently in the regulation. It goes without question, individuals performing safety sensitive duties should be tested, but from what has been allowed in the past; testing is limited to employees of a certain status. Even though their job duties may have required them to perform safety sensitive activities, employees, who hold a "certain status", by passed testing. Closing this loophole will certainly, include these employees when future certification of employees comes due.

Commenting on the types of drug testing, specifically pre-employment testing; and random testing. The changes that the FAA is proposing, basically is going to take it back to it's pre-1988 regulatory procedures where, "No employer may hire any person to perform any function listed in this appendix, (Appendix I, and Appendix J), unless the applicant passes a drug test for the employer". The language was clear then, in 1988; the intent of the changes to the

language in 1994 was to give employers flexibility in hiring. This flexibility opened, gave way to employees working in safety sensitive areas, for extended periods of time, with “positive” drug test results; breaking down what little control the FAA had, all to the advantage and knowledge of employer.

Clarifying the length of time an employee waits before being subject to a random test is in keeping with the tradition of checks and balances needed for compliance.

Eliminating periodic testing. Accordingly, periodic testing was implemented as a transitional tool for random testing. And since random testing is now going better than planned, it makes sense to take out periodic testing requirements. Together with expanding the reasonable cause drug testing requirements will serve notice to all employees working autonomously from their respected employers; thus allowing more supervisory control over employees who work across organizational lines.

My comments parallel the changes the FAA is proposing for eliminating unneeded, unnecessary paperwork, at the onset to any employer’s anti-drug program initiatives. The approval plans were mentioned as the number one “waste of time, and effort” by most organizations entering into the program, as well as the administration office’s within the FAA. I am led to believe that there were numerous versions of the same program. This fact may have, and may have not put a burden on the FAA, but one can imagine the time consumed in sorting out, from every submission, vital and nonvital information. Standardizing the process, from implementation, for employers, makes it easier for the agency to know who has submitted requests for programs; it tells the agency, how long programs have been operating, and as the Federal Register states, makes it easier for the agency to make changes, administrative and otherwise.

Some certificate holders will be able to access the database remotely; while other certificate holders will still be required to access information through some form of physical contact with a pre-established entity. The way I understand this issue; manpower determines how an employers drug program is run, basically, his employee count. With that in mind, access to this type of information exchange should become a paramount issue, if the safety concerns are to become the standard industry wide.

The Alcohol Misuse program generally, mirrors those relating to drug-abuse, in Appendix I, and Appendix J. Adding, "For the purpose of reasonable suspicion testing, an employer may make a reasonable suspicion determination regarding any contract employee who performs a safety-sensitive function on the employer's premises and under the supervision of the employer, and may refer the contract employee for a reasonable suspicion test under the contractor's alcohol testing program." Reasonable Suspicion testing, will in fact leave "no doubt" as to who is responsible for the overseeing the intent of the program, among employees working in safety sensitive job positions.

Initially, cost will be a significant part of an organization's concern, especially employers with a higher count of employees and employers without any existing programs on record. These two groups, as mentioned, face higher expenditures than other employers do, with databases already established do, and a working knowledge of the FAA administration does. But, at the same time, cost associated with implemented programs, and changes to programs, will more than outweigh the cost of not having the administration in place. And, as the programs develop and grow, the cost associated with maintaining the programs should drop, and level off a great deal based on the ten-year projections required by the General Accounting Office.

Final comments on the overall proposal. I wholeheartedly concur with the FAA's initiatives for standardizing testing, pre-employment, as well as random testing of employees in safety sensitive jobs. The FAA's administrative policy changes to Appendix I, and Appendix J, will spell out, who should be tested and when, also it clarifies it's position, and answers questions, posed by industry insiders, on when and who can determine testing situations, "Reasonable Cause Drug and Alcohol Testing". The proposed rule changes will strengthen the "Anti-Drug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activity", without causing undo hardship on of the FAA or employers. And will also serve as a deterrent to questionable behavior for the men and women working under these standardized rules, and regulations. I thank you for your time and consideration.

Respectfully,


Shannon B. Hayes, Jr.